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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUBCOMMITTEE

Thirty-first session

SUMMARY RECORD OF THE 559th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 6 April 1992, at 10.30 a.m.

Chairman: Mr. MIKULKA (Czechoslovakia)

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The meeting was called to order at 10.40 a.m.

MATTERS RELATING TO THE DEFINITION AND DELIMITATION OF OUTER SPACE AND TO THE CHARACTER AND UTILIZATION OF THE GEOSTATIONARY ORBIT, INCLUDING CONSIDERATION OF WAYS AND MEANS TO ENSURE THE RATIONAL AND EQUITABLE USE OF THE GEOSTATIONARY ORBIT WITHOUT PREJUDICE TO THE ROLE OF THE INTERNATIONAL TELECOMMUNICATION UNION (agenda item 4) (continued) (A/AC.105/484, A/AC.105/513; A/46/20; A/AC.105/C.2/L.147 and 189)

1. Mr. POERWANA (Indonesia) said that the definition and delimitation of outer space and the character and utilization of the geostationary orbit were important subjects which should be discussed as a single issue, since any decisions relating to one would affect the other.

2. The problems of the definition and delimitation of outer space had been discussed at length ever since it had first been raised in 1959 and it now had to be solved in order to strengthen the legal order pertaining to space activities. Opinion on the subject was, however, divided. His country regarded delimitation as essential, since the boundary between airspace and outer space would have a direct impact on the territorial boundaries of sovereign States, and considered that it should be agreed by consensus among States, taking into account the principles of the sovereignty of each State over its territory and the permanent sovereignty of peoples over the natural resources within their territory. He welcomed the working paper submitted by the Russian Federation (A/AC.105/C.2/L.189), which clarified the points at issue and provided a good basis for further discussion.

3. As far as the geostationary orbit was concerned, the paper submitted by Colombia, Ecuador, Indonesia and Kenya at the Subcommittee's twenty-third session (A/AC.105/C.2/L.147), the working non-paper submitted by the Group of 77 at the twenty-eighth session (A/AC.105/430, annex II, para. 20); and the working non-paper circulated by a number of member States of the Group of 77 at the thirtieth session (A/AC.105/484, annex II, para. 12) reflected the development of understanding between the developing countries, including the equatorial States, and other members of the Subcommittee and should be used as the basis for further discussion.

4. Any legal principles governing the utilization of the geostationary orbit should establish a rational and equitable balance between the interests of the developing countries, including the equatorial countries, and the developed countries for the benefit of all mankind, taking into account the particular needs of developing countries and the fact that the geostationary orbit was part of outer space, located in the equatorial zone of the Earth and was a limited natural resource. Since science and technology had a vital role to play in the utilization of the geostationary orbit for the benefit of all mankind, the transfer of technology should be included as one of the draft legal principles pertaining to the geostationary orbit. In view of the need for such principles in order to supplement the existing legal instrument relating to space activities, his delegation pledged its readiness to reach consensus on the matter.

5. Mr. KOPAL (Czechoslovakia), referring to the definition and delimination of outer space in the context of the present and future development of space transportation systems, said that many United Nations and other international instruments on space activities used the term "outer space" without defining it, although the wording of many provisions of those instruments made it plain that the treaty-makers were aware of the need to explain the term so that such provisions would be correctly interpreted and applied.

6. There had been no need for a definition of outer space until space activities had begun; aeronautics had been able to develop even though the 1919 Paris Convention on International Air Navigation and the 1944 Chicago Convention on International Civil Aviation did not contain such a definition. The definition of outer space and its delimitation from airspace would therefore have to be such as to satisfy the needs of space flight and prevent obstacles to the growth of outer space activities, and thus necessarily global, invariable, clear, simple and easily applicable from both the ground and outer space. Only one astronautical criterion met those requirements: the lowest perigee at which space objects were still able to continue orbiting the Earth for a prolonged period. Despite rapid progress in space technology, that criterion had remained unchanged over the years and was feasible to apply in practice. It was already implicit in provisions such as article II, paragraph 1, of the 1975 Convention on Registration of Objects Launched into Outer Space, which required registration of space objects when they were "launched into earth orbit or beyond". Notwithstanding the lack of formal agreement, that meaning had been attributed to the term "outer space" by spacefaring nations and tacitly recognized by others.

7. The definition of outer space had to be considered not only in respect of the development of space law, but also as it related to new trends in the technology of space flight, where it had practical implications for reusable space vehicles, space stations and aerospace transportation systems. The space shuttle, for example, was launched and operated as a space object, but returned to Earth as an aircraft within the meaning of the definition given in annex 7 of the Chicago Convention. That dual function was considered by some to be a major new factor in the practical utility of an agreement on a boundary between airspace and outer space. Although there were those who considered that the landing constraints of the space shuttle precluded its definition as an aircraft and believed that it could be operated safely without such a definition, thus obviating the need for delimitation between airspace and outer space, future aerospace systems, as indicated in the working paper submitted by the Russian Federation (A/AC.105/C.2/L.189), could well be capable of remaining in airspace for a relatively long period and operate in a limited way as aircraft. Such space objects, though differing from aircraft in the origin and purpose of their flight, would move in parts of space covered by two different legal regimes, one of which applied the current principles and norms of international and national aviation law.

8. The crucial point was therefore not whether the aerospace vehicle, in an ascending, descending or intermediate stage of its flight, was to be considered an aircraft or a spacecraft, but that, whenever the aerospace vehicle entered a part of space superadjacent to the territory of a State and subject to its complete and exclusive sovereignty, it would have to observe

the territorial sovereignty of that State, in an analogous fashion to seagoing vessels navigating on the high seas and in territorial waters. It should be borne in mind that future generations of aerospace vehicles with increased aerodynamic capabilities might well be capable of taking off and landing from airports and be used not only for space exploration, but also for the transportation of persons and goods between different points on the Earth and between Earth and space.

9. Mr. BOYER (France), referring to the comments by the representative of Czechoslovakia, said that, according to General Assembly resolution 222 (XXI), the Subcommittee's mandate was to study questions relative to the definition of outer space or, in other words, to consider whether such a definition was necessary, not what form it should take, a matter that would generate lengthy and inconclusive debate and was not solely of a legal nature. Moreover, the second paragraph of article I of the 1967 Outer Space Treaty would appear to favour the non-delimitation of outer space; since it called for "free access to all areas of celestial bodies", it necessarily implied that there should also be free return. The consequences of any delimitation of outer space therefore required careful consideration so that, through any appeal to territoriality, constraints would not be placed on the principle of free access to and free return from outer space. In that context, he welcomed the working paper submitted by the Russian Federation (A/AC.105/C.2/L.189) because it dealt with the problem of aerospace objects not by extrapolation from existing legal provisions, but on the basis of the facts and a consideration of the benefits such objects could bring to mankind.

10. Mr. RAO (India) said that States unanimously agreed that outer space differed from airspace in legal status and nature. Airspace was within the sovereign domain of each subjacent State, whereas outer space was the heritage of all mankind and meant for the common and peaceful use of all. Outer space was not subject to alienation or appropriation by any State or group of States. The definition and delimitation of outer space limits would promote its peaceful use and demilitarization. Moreover, the implementation of outer space law, including the provisions of the 1967 Outer Space Treaty, the 1971 Convention on International Liability for Damage Caused by Space Objects and the principles relevant to the use of nuclear power sources in outer space, depended on a clear-cut distinction between airspace and outer space.

11. Despite the practical and legal need for such a distinction, States had become involved in a political debate characteristic of the cold war era. In the situation that now existed, it was to be hoped that, in the common interests of all mankind, they would look at the problem in a new light.

12. His delegation welcomed the working paper submitted by the Russian Federation (A/AC.105/C.2/L.189), whose purpose was to break the deadlock and stimulate discussion on the question of the legal regime for aerospace objects. It stressed the need for the definition and delimitation of outer space and raised a number of pertinent questions.

13. A general question that arose was whether a space object was identical to or different from the medium of its transit or stay. If it was different, a further question was whether the space object acquired the legal status of the medium or whether the medium acquire the legal status of the object.

14. He also pointed out that the Legal Subcommittee had defined and was still defining variables relating to outer space, such as "launching State", "space objects" and some scientific terms. He therefore saw no problem in defining outer space itself, on whose legal status and nature and practical differentiation from airspace States agreed. What was required now was a new approach.

15. In his country's view, the geostationary orbit was part of, and had the same legal status as, outer space. As a member State of the International Telecommunication Union and of the Committee on the Peaceful Uses of Outer Space, India considered that there was no contradiction between the respective roles of those two bodies in dealing with the subject from their respective vantage points. Without prejudice to the role of ITU, the Subcommittee should consider only broad, non-technical questions of access to and the utilization of the geostationary orbit in the light of the existing international situation and the needs and interests of developing countries. The working non-paper submitted at the Subcommittee's last session (A/AC.105/484, annex II, para. 12) would be a good basis for discussion.

16. Mr. GALLOWAY (Observer for the International Astronautical Federation (IAF)), said that IAF was a non-governmental association of national societies, institutions and industrial companies concerned with space activities. It had been established in 1950 and now had 123 organization members in 39 countries. Its aims were to foster the development of astronautics for peaceful purposes; promote the dissemination of technical information; stimulate public interest in space flight; and encourage astronautical research. In 1960, it had created the International Institute of Space Law (IISL).

17. The IAF World Space Congress would be held in Washington D.C. from 28 August to 25 September 1992 on the theme "Discovery, exploration and cooperation". It would be a celebration of International Space Year, the 500th anniversary of Christopher Columbus's first voyage to the New World and the first 35 years of the modern space age.

18. Since its establishment, the International Institute of Space Law (IISL) had maintained close relations with the Legal Subcommittee. The President of IISL, Judge Manfred Lachs of the International Court of Justice, had been the Chairman of the Legal Subcommittee during the negotiations which had led to the adoption of the text of the 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies.

19. The work of the Legal Subcommittee, its parent Committee and the Scientific and Technical Subcommittee had made it possible to integrate space science and technology with the legal aspects of mankind's activity in outer space. As various provisions of the 1967 Outer Space Treaty had been expanded into new international agreements, space law had become an important branch of general international law.

20. IISL now had over 400 individual members from 42 countries and the proceedings of its annual Colloquium on the Law of Outer Space were published by the American Institute of Aeronautics and Astronautics. The 1992 meeting, to be held in Washington D.C., would discuss topics such as managing environmental issues, including space debris, and the legal regulation of the economic uses of outer space. The 1993 Colloquium would be held in Graz, Austria, during the forty-fourth IAF World Space Congress and the topics for discussion would include the arbitration of disputes regarding space activities and aspects of space insurance.

21. Mr. PODCHERNIAEV (Russian Federation), referring to the comments by the representative of France, said that the return to Earth of a space object did not require "free access to all areas of celestial bodies" and was not governed by article I of the 1967 Outer Space Treaty. The term "outer space" meant the space beyond the atmosphere, as exemplified by the French term "espace extra-atmosphérique".

22. Mr. RASHKOW (United States of America) said that his reaction to the comments by the representative of Czechoslovakia was similar to that of the representative of France. He also agreed with the representative of the Russian Federation that the 1967 Outer Space Treaty did not apply to the return to Earth of a space object. In his delegation's view, it would be better not to tamper with the existing legal regime for outer space, which had produced such beneficial results over the years.

23. Mr. GONZALEZ (Chile) said that the three paragraphs of article I of the 1967 Outer Space Treaty should not be interpreted separately and in isolation. Any comprehensive reading of the Treaty led to the inescapable conclusion that the definition and delimitation of outer space were necessary. He had not heard any valid legal arguments against that proposition. The debate had merely shown that there were two schools of thought: the first was based on legal arguments and considerations of principle, while the second relied on the political will to maintain the status quo.

24. He requested the representative of the United States to explain how a NASA space shuttle was characterized in legal terms.

25. Mr. RASHKOW (United States of America) said that, for the purposes of the 1967 Outer Space Treaty, a space shuttle was treated as a space object.

The meeting rose at 11.45 a.m.